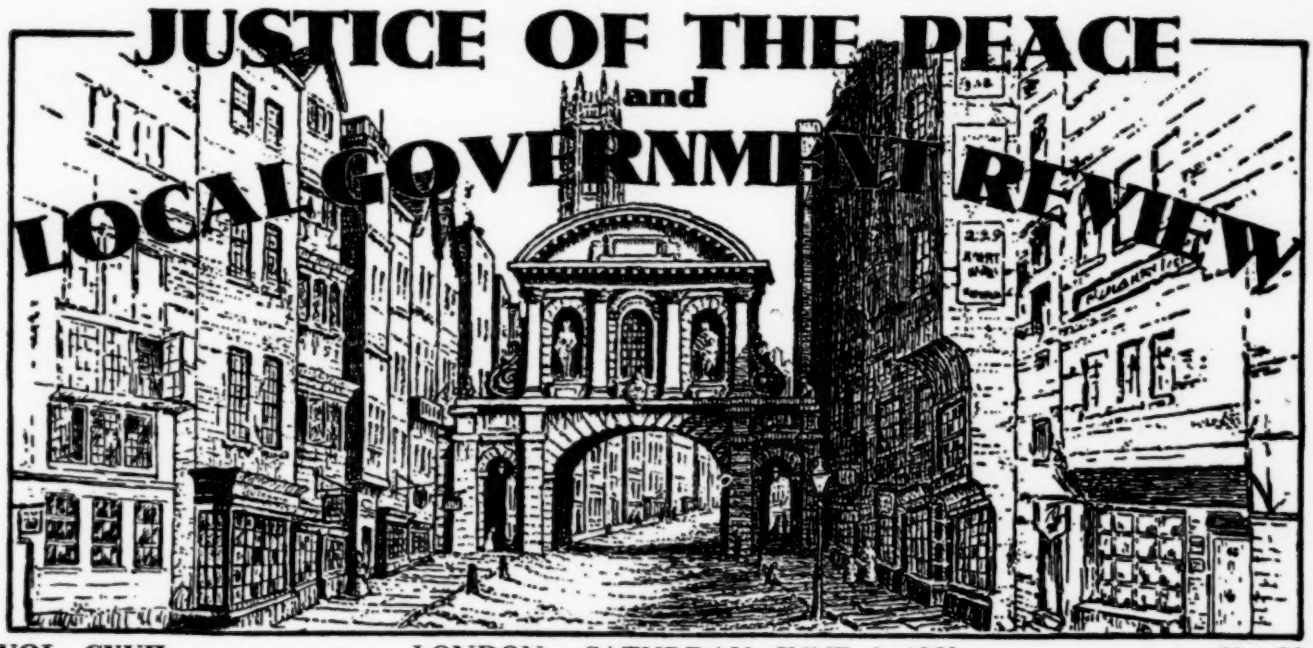

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Law Courts,
Hull.

Amended Advertisement

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NOTES of the WEEK

Neglect to Maintain Wife and Children

The Matrimonial Causes Act, 1950, provides in s. 23: "Where a husband has been guilty of wilful neglect to provide reasonable maintenance for his wife or the infant children of the marriage, the court . . . may, on the application of the wife, order the husband to make to her such periodical payments as may be just. . . ." This section closely parallels the wording of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, and accordingly the decision of Mr. Justice Barnard in *Ridley* v. *Ridley*, reported at [1953] 1 All E.R. 798 on the scope of s. 23 of the Matrimonial Causes Act, is a guide to magistrates' courts as to the course to be adopted should similar argument be raised concerning the scope of s. 4 of the Act of 1895. In the case of *Ridley* the wife took out a summons under the Matrimonial Causes Act, 1950, s. 23, and the court found as a fact that the husband had been guilty of failing to provide reasonable maintenance for her, but that, in view of a deed he had entered into in favour of the children, he had not been guilty of neglecting to provide reasonable maintenance for them. Nevertheless, Mr. Justice Barnard held that looking at the section broadly he was satisfied that he could make an order for periodical payments in respect both of the wife and of the children. Of course, the circumstances of this case must be borne in mind: the children were being maintained at a boarding school, but were going to stay with the wife during part of the school holidays, and this factor seems to have assumed some importance in Mr. Justice Barnard's mind. His decision might possibly have been different if the children were maintained at the boarding school and spent all their holidays with the father. The kind of circumstances in which the same problem might be raised in magistrates' courts is where the husband and wife are no longer living together, and he is not maintaining his wife, but is providing for the children who are living with a relative. If in such circumstances the wife should take out a summons on the ground that he has failed to provide maintenance for herself and the children the court might possibly feel that, despite the decision in the case of *Ridley*, it would be advisable to deal with the question of the maintenance of the children on a summons taken out under the Guardianship of Infants Acts.

Imprisonment for Boy of Fifteen

The object of s. 17 of the Criminal Justice Act, 1948, is to keep young people out of prison as far as possible and to ensure that no offender under twenty-one years of age shall be sent to prison unless the court is satisfied after due inquiry that there is no alternative. The obligation on courts of quarter sessions and magistrates' courts to state the reason for passing such a sentence, makes it impossible that the question of alternative treatment should be overlooked.

There are still a few cases in which there really is no suitable alternative to a sentence of imprisonment, even though the offender is very young. Such a case came before the Court of Criminal Appeal in *R.* v. *Macey* (*The Times*, May 16), when a sentence of five years' imprisonment passed by a court of quarter sessions upon a boy of fifteen was confirmed.

Croom-Johnson, J., who delivered the judgment of the Court, said that the boy had admitted committing 105 offences since 1949 and, between 1948 and 1952 he had been in approved schools to which he had been sent for the commission of the best part of those offences. Quarter sessions had taken every care, had given the boy a chance on probation and shown him all possible humanity, but the only recognition he showed was to run away. This sentence was a real attempt to get the boy to realize the error of his ways, and to realize also that his conduct could not be allowed to continue. The Court had taken notice of the fact that the Home Secretary was enabled, under the provisions of the Act, to transfer the boy to a borstal institution when he reached the age of sixteen.

The wording of s. 59 of the Criminal Justice Act, 1948, which refers to any person under twenty-one, would appear to authorize the transfer from prison to a borstal institution of a person aged fifteen, but it is to be noted that s. 48 (1) (*c*) describes borstal institutions as "places in which offenders not less than sixteen but under twenty-one years of age may be detained."

Hired Vehicles—a "B" Licence Problem

The case of *Sykes* v. *Millington* [1953] 1 All E.R. 1098 is of importance to holders of "B" and "C" licences under the Road and Rail Traffic Act, 1933. The holder of a "B" licence hired his vehicle, with a driver, to the holder of a "C" licence. The owner of the vehicle (the "B" licence holder) paid the driver's wages, but kept a separate account of them for the period when the vehicle was hired out, and took them into account in making his charges for that hiring out. Once the driver reported with his vehicle to the "C" licence holder's office, he took his orders from the hirer, and the owner of the vehicle had no control over it during the period of the hiring. The vehicle was used by the hirer, under his "C" licence, for purposes permitted by that licence which were, however, outside the scope of the owner's "B" licence. The owner was charged with using the vehicle otherwise than in accordance with the conditions imposed by his "B" licence.

The important provision to be construed is s. 1 (3) of the Act, which is as follows: "When a goods vehicle is being used on a road for the carriage of goods, the driver of the vehicle, if it belongs to him or is in his possession under an agreement for hire, hire purchase or loan, and in any other case the person

whose agent or servant the driver is, shall, for the purposes of this Part of this Act, be deemed to be the person by whom the vehicle is being used."

The justices who tried the case said that they would not decide whose servant the driver was, but that they did decide that he was the agent of the hirer during the period that the vehicle was used under his orders. As a common-sense decision this appears to have a good deal to commend it, because to the man in the street if a driver takes from a person his orders as to where he is to go and what goods he is to deliver it seems reasonable to say that he is, while performing those duties, the agent of that person. Unfortunately this is not the legal position and the Lord Chief Justice stated that applying the tests that have been laid down it was too clear for argument that in the circumstances set out the driver was the servant of the owner of the vehicle, and he added that he could not be the servant of the owner and the agent of the hirer in performing the same piece of work. It followed that the owner was using the vehicle in contravention of the provisions of his " B " licence, and the case was sent back to the justices with an intimation that the offences were proved.

The position seems to be a most unsatisfactory one, and both Lord Goddard, C.J., and Lynskey, J., expressed the view that something should be done to make the matter clear to those who may well be confused by it.

Probation Committees Reports

We are again receiving a considerable number of annual reports of probation committees, probation officers and juvenile courts. We are very glad to have them, and we offer our thanks to those who send them. We like to be able to refer to items of general interest in all of them, but considerations of space may make this impracticable. To those who do not find reference to their own reports, or who think there is undue delay in dealing with them, we express regret, and we assure them that all such reports are read with interest.

North Riding Probation Report

In his report for the year 1952, Mr. Frank L. G. Sendall, principal probation officer of the North Riding of Yorkshire, gives most of his attention to juveniles, though the statistics show that probation is used for adults also, and probation officers have their share of matrimonial and other social work.

Although juvenile delinquents in the North Riding show a decrease in number in 1952, the percentage of offences of dishonesty, principally stealing, shows an increase in relation to the whole number of offences. On this point Mr. Sendall writes : " The conclusions to be drawn seem to me to be simple. Two sets of authority divide control over a juvenile's waking hours, home and school. Working class parental influence is less taut than in years long gone by. Schools for the children from these homes seem to have lost some of the disciplinary hold they once had and I think the schools receive now less loyalty from the children and less backing from the parents. Lack of belief, and possibly to a small extent over much organization has cut the ground from under youth organizations."

Privilege of State Documents

A recent case decided in the Court of Appeal has drawn public attention in a vivid way to the difficulties and dangers that may be caused to the subject as the result of the state successfully claiming privilege of their documents. The case was *Ellis* v. *The Home Office* and it was reported in *The Times* for May 14. Mr. Ellis alleged that he was attacked suddenly by another prisoner in Winchester Prison on July 22, 1949. His skull was fractured and he claimed damages from the Home Office on the ground of the failure of the prison authorities in their common law duty to take care of him or for the breach of the Prison Rules 1949. His claim was dismissed by Mr. Justice Devlin at Winchester Assizes and from that decision he appealed to the Court of Appeal.

In delivering judgment, Lord Justice Singleton said that the Judge in the court below had been concerned because the plaintiff had not been able to test the evidence respecting his assailant and his behaviour because that evidence was not before the court since the defendants who were also the Crown had claimed Crown privilege for it and, having regard to the decision in *Duncan* v. *Cammell Laird & Co., Ltd.* [1942] A.C. 624, that claim could not sensibly be challenged.

The *Cammell-Laird* case which arose out of the sinking of H.M. submarine *Thetis* in June, 1939, decided that the court should uphold an objection taken by a public department called upon to produce documents in a suit between private citizens if on grounds of public policy they ought not be produced.

This case, however, made it clear that production should only be withheld when the public interest would otherwise be damnified, as where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service.

The first two categories of privilege are justifiable enough, for it is plain that the defence of the country and its diplomatic negotiations must not be damaged by the disclosure of state documents. These interests override any interests which the individual subject may have in the disclosure.

The third category is more open to question. The necessity for keeping a class of documents secret because this secrecy is necessary for the proper functioning of the public service is a claim that requires more scrutiny. In the *Cammell-Laird* case Viscount Simon, L.C., said : " It will be observed that the objection is sometimes based upon the view that the public interest requires a particular class of communications with or within a public department to be protected from production on the ground that the candour and completeness of such communications might be prejudiced if they were ever liable to be disclosed in subsequent litigation rather than on the contents of the particular document itself. . . ."

Lord Lyndhurst, L.C., in *Smith* v. *East India Co.* (1 Ph. 50) said (speaking of communications between the East India Company and the Board of Control) ". . . it is also quite obvious that if, at the suit of a particular individual, those communications should be subject to be produced in a court of justice, the effect of that would be to restrain the freedom of communications and to render them more cautious, guarded and reserved. . . ."

In the *Ellis* case an unusual feature in the course of the trial was when a witness named Hutton (another prisoner) gave evidence on behalf of the plaintiff. He gave his evidence three and a half years after the events and in cross-examination by counsel for the defendants was asked whether what he was saying was not very different from what he had said at the first. He had then explained that it was a long time ago but that he had testified hours after the events which happened and that the police had taken a written statement from him at *that* time. Counsel for the plaintiff had called for the statement but counsel for the defendant had objected that a claim of privilege had been made for it and it was not produced.

Now it is clear that a document of this nature should have been before the Court in order to enable them to assess the effect of the evidence properly. In his judgment Lord Justice Singleton pointed out that in his view no harm would be done to public interest by letting the plaintiff in a case of this type see the result of the police inquiries or at least an abstract of them. No doubt there are documents which should be privileged in order that their writer can write them "with candour and completeness" but this degree of privilege could cover a multitude of sins and result in injustice being done to the individual subject without corresponding advantage in the protection of the interests of the community as a whole. As was pointed out in the *Ellis* case, the real danger is that such a wide claim of privilege may prevent material facts being established or disestablished, with the result that one side (the Crown) has all the advantages whilst the other is deprived of something which it might have without any danger whatever to the public weal. In the ultimate analysis we think that government departments should be most careful before claiming privilege of state documents when there are not clear grounds of national interest in so doing. The interests of justice demand the most conscientious scrutiny from our trusted Civil Service.

Speech Therapy

We all know people who are severely handicapped by stuttering, and there was the outstanding instance of his late Majesty whose speeches on the wireless showed how he had persevered to get rid of the disability which distressed so many listeners when he first broadcast. Children today have greater advantages in this matter than a few years ago, and speech therapists are available in many areas. In Kent, for instance, according to the last annual report of the School Medical Officer, 1,188 children were referred to the therapists in the year and there were 15,855 interviews. In 467 cases there were consultations only, and 344 were discharged from treatment as cured. Ninety-one others were described as non-co-operative. It is satisfactory that in only twenty-four cases was the condition unchanged after treatment. There is a close link between the county speech therapy service and the Regional Hospital Board, whereby consultants working in hospital refer child, adolescent and adult patients to the speech therapy clinics, and whereby the speech therapists are able to consult specialists in the hospitals in regard to specific cases not previously seen by hospital consultants. A further valuable service is that of confirmation in regard to therapists' mental assessment findings by psychologists. Consultations with those operating child guidance clinics are also arranged where necessary. The education service is so costly that local education authorities must hesitate about developing any new departments, but it would seem that the curing of speech defects is one important way in which some children can be helped very considerably to become fully useful citizens when they grow up. Stuttering can also be self-helped to a great extent, and we were interested to see an article recently in a popular magazine describing how a man had cured himself, and had then taken pleasure in helping others.

Welfare of Mental Hospital Patients

It is now recognized as important in the treatment of mental patients that efforts should be made to banish as far as possible their feeling that they are shut away from the life of the community. One way in which this has been achieved in some hospitals is by eliminating locked doors. This is probably impracticable entirely, but experience shows that where action has been taken in this direction, there has been a steady decrease in the percentage of patients formerly classified as refactory or disturbed, and that all types of patients appreciate the removal of the strains imposed by living behind locked doors. Nurses have found that the supervision of patients, made more contented under this system, is easier and more pleasant. Patients' relatives have also expressed their appreciation of a policy which has lessened the apprehension with which they formerly regarded the mental hospital. It has been found that the open ward policy can be carried out without increasing the number of staff. Perhaps a still better way of promoting the welfare of patients is by the community taking an active interest in the hospital. This has been achieved in some localities by groups of people banding themselves together to take an interest in the individual patient and to be his friend and counsellor. They bring much welcome comfort to patients by visiting them in the hospital, inviting them out to tea and arranging picnics and outings, the cost being met by voluntary contributions. This is particularly valuable for those who have few visits from their own relatives or friends. Such indications of interest by outside parties remove from the patients the feeling of being isolated from and forgotten by the outside world.

The Elderly Chronic Sick in Bristol

A report has been published on the treatment and care of the elderly chronic sick in Bristol which, in some respects, strengthens the views which have already been expressed by such bodies as the National Old Peoples' Welfare Committee. On the question of hospital treatment, it is agreed that where doubt as to diagnosis exists, a patient ought, in the first instance, to be admitted to a hospital where appropriate diagnostic investigations can be carried out. Unfortunately in present circumstances this is not always practicable. The Sub-Committee of the Local Medical Committe which was responsible for the inquiry believes, however, that if suitable full or part-time work could be found for unoccupied old people, it would do much to save them from illness and infirmity; and suggests that the possibility and extension of work which could be undertaken in the home should not be minimized or overlooked; and it is asked "could not tuition and sales be organized?" As in other parts of the country, the Bristol City Council provides a domestic help service, but it desired to supplement this by the addition of a night attendant scheme. Unfortunately, so far, that has been rejected by the Ministry of Health, but it is felt that this would meet a real need, and the Ministry is being pressed to give its approval.

On the care of the aged suffering from mental infirmity, the view is expressed that a mental hospital should be in a position to admit *senile dements* without certification, for which new legislation would be needed in order to give the necessary full powers of detention. This is a matter which will no doubt be considered in connexion with new legislation and review of the statutes dealing with lunacy and mental deficiency is much overdue. Magistrates who are sometimes called upon to certify persons for admission to mental hospitals merely because there is nowhere else for them to go would be greatly relieved if something was done in this connexion, but the precise legislative provision to be made will need careful thought. In referring to old people's homes provided by the local authority under the National Assistance Act, it is mentioned that one of the difficulties experienced is the tendency of the hospitals to discharge patients who prove to be of doubtful mental suitability for the small homes, and it is suggested that a special home should be erected for the purpose by the local authority. The view is reached in dealing with this section of the problem that "the division of the Health Service between three legal entities is causing many problems." This must be apparent to all who

are concerned in any way with the subject but at this stage any drastic alteration of the basic principles of the National Health Service is unlikely and, as we have urged in other connexions, the Ministry of Health should take more definite steps to remove some of the difficulties.

In concluding a useful report, it is explained that those responsible for the investigation have become progressively conscious of the wide ramifications of the problem of the elderly chronic sick, and fear that there is a danger, through lack of money and building materials, of the problem getting out of hand. We believe, however, as was shown in the recent debate in the House of Commons more could be done to alleviate the position without adding considerably to the present heavy cost of the National Health Service.

CHIEF CONSTABLE'S ANNUAL REPORTS, 1952

CRIME

Following the practice now established over some years, a number of chief constables of counties, cities and boroughs in England and Wales have sent us copies of their annual reports. It has so far been our custom to publish these in more or less abridged form ; as much of the detailed information, however, is for the specialist rather than the general reader of this journal, it has now been decided to present features of the reports and to begin with crime, a topic of real concern to everyone.

An overall view tends to indicate that the crime peak has been reached. Decreases where recorded are frequently substantial, some districts indicate a stand-still ; even in those places where increases are recorded they are small.

This present condition poses the problem of whether the alarming spate of indictable offences in the post-war years was due in the main to depleted police strengths ; or, as suggested by many authorities at the end of the war, a crime wave was to be naturally anticipated as a sequel of abnormal national, indeed international, conditions. If the latter is a correct appreciation, we may look forward to a reversion to more or less pre-war crime returns, which presages a financial saving, when every form of economy is of paramount importance, in the constabularies.

The chief constable of Bradford reports a decrease of 134 ; a table giving figures since 1947 shows a progressive decrease from 5,505 in that year to 4,890 in 1952. As regards non-indictable offences there were 820 fewer people prosecuted. At Wakefield the total fell by twenty-two. On the other hand an increase of fifty-eight was recorded at Bournemouth, where the number of juveniles involved also rose from ninety-nine to 141. Thefts from shops dropped sharply to the lowest number for three years.

South Shields shows a decrease of 242 indictable offences ; juveniles were responsible for forty-three *per cent.* of the detected crimes. At Newcastle-upon-Tyne, crimes fell from 4,546 to 4,442. The Chief Constable of Liverpool indicates a five *per cent.* decline, the most noteworthy being in cases of shopbreaking. Cargo stolen from the docks fell in value by £4,204. Cambridge speaks of an increase of thirty-four which brings the total to the highest for the City since 1948 ; juveniles dealt with were fourteen less.

The Team Policing System operates at Salford where a decrease of 234 crimes is reported. Nearly seventy *per cent.* of all offences against the person were indecent assaults on females ; thirty of the forty cases were, however, cleared up. Crimes involving real violence were very few. There was no evidence of a cosh or similar weapon being used during the year. A rise in shopbreaking at Swansea was due to seven young offenders active over a period of six months. In Exeter, a slightly downward trend is indicated from the highest peace time record (1,074 in 1951), and a fall in offences against property with violence. Juveniles dealt with were twenty-five less than in the previous year.

Larceny by servant has, during the past four years, persistently increased at St. Helens, partly due it seems to the fact that employers are reporting offences of this kind more readily. " In the previous year," says the Chief Constable of Rochdale, " the increase in crime could be accounted for wholly by . . . lead stealing. . . . During 1952, there were forty-one fewer cases due, no doubt, to the reduction in the price of lead. . . ." At Northampton, an " ominous " increase in the value of property stolen, having regard to the comparatively slight increase in crime, is explained by the conviction of one person for the embezzlement of £13,000. Juveniles before the courts in Huddersfield rose from ninety-seven to 146. Of ninety-eight offences against property with violence, forty-two were the work of juveniles. The Chief Constable comments : " The marked increase . . . is brought about by lack of parental control."

A slight increase is reported in Norwich but the total is much below the peak period 1947-48. " Housebreaking in many cases was made easy by windows left open, doors closed but not secured and keys secreted in hiding places or left dangling in letter-boxes. Even children took advantage of these failures on the part of householders. . . ." In Walsall, a decline in crimes by juveniles has occurred ; the figure 118 (indictable) and ninety-seven (non-indictable) compares not unfavourably with the pre-war return of 180 for both classes. There were 209 cases of stealing lead in Leeds and 216 offences of taking motor vehicles without the owner's consent.

The use of dogs is an integral feature of the Hertfordshire Constabulary, they were used at seventy-four scenes of crime. " In most cases the scent was followed for a considerable distance but many of the trails ended at a road or near a bus stop." " A very welcome reduction of 201 crimes," comes from Oxford, through a marked decline in housebreaking and larcenies. Monmouthshire experienced a ten *per cent.*, and Derby county borough a thirteen *per cent.* drop. Derbyshire, too, had 339 less indictable offences than in 1951. The report adds : " There has been a decrease in the number of offences of robbery with violence. . . ."

The Chief Constable of Dewsbury records a phenomenal decline, accounted for by two men who were in 1951 responsible for 511 cases of false pretences. The Leicestershire and Rutland joint force has experienced what is tantamount to a stand-still. A fall occurs at Wolverhampton, but it is emphasized that the total includes 394 crimes, called " continuing offences," those are where a series is committed by individual offenders. Eastbourne, on the other hand, has reached its highest ever crime total, exceeding the 1951 return by eighteen. Blackburn and Tynemouth record increases of twenty-three and sixteen, respectively. Hastings shows a fall of 130, and the report comments : " . . . in studying the figures we seem to be approaching the pre-war average. At Birkenhead a substantial decrease, of 312 crimes, must give the municipality a sense of satisfaction.

SPORT AND PLANNING PERMISSION

By LORD MESTON, *Barrister-at-Law*

Outdoor sport is one of the finest things in the world. It is not by any means the perquisite of the rich—if such term can be applied to anyone nowadays—but it is unfortunately true that many people are unable to play outdoor games through lack of the usual facilities. In addition to playing games there is the pleasure of watching other people play, and indeed in many cases there are more spectators than actual players. But whether one plays oneself or watches other people exhibiting their prowess there is one fundamental requirement to all such enjoyment, namely, the provision of the necessary land. This frequently comes into conflict with the claims of agriculture, and other matters are also involved, such as the claims of amenity. Hence we find ourselves once more involved in the subject of town and country planning and considerations of the best use of the available land in the country. The use of land for public sporting events and amusements is " development " within the meaning of that term in the Town and Country Planning Act, 1947, and hence requires planning permission. The refusal of such permission, or the imposition of terms on the granting of permission, by the local planning authority is subject to appeal to the Minister, and in this connexion much interesting information can be obtained from the *Bulletin of Selected Appeal Decisions* which is published at intervals by the Ministry of Housing and Local Government (formerly the Ministry of Town and Country Planning). These decisions lay down no fixed principles but they illustrate the various matters which have to be considered in making applications for planning permission, and hence are useful by way of general guidance to those who seek such permission for various forms of development.

An examination of these appeal decisions during the past six years may prove both instructive and helpful. Let us begin by considering the proposed erection of a sports stadium—a matter which involves many important factors. The appellant had an option to purchase twenty-two acres of rough pasture land situated on the bank of a small river in a partly rural and partly industrial valley. He sought permission to use the land for pony, cycle, and dog racing, and field events. The local planning authority refused consent for several reasons, the principal reason being that seven acres of the site in question had already been selected for a local recreation ground for organized games, and that the parish council intended to take immediate steps to acquire this land. On appeal, the Minister considered that the use of the land for a local recreation ground would result in greater advantage than the use proposed by the appellant, and he dismissed the appeal. In another case, the appellant sought permission for the proposed development of a sports stadium comprising greyhound racing and speedway tracks, a swimming pool, tennis courts, etc., on nine acres of low-lying pasture land in a triangle formed by two railways and a classified B road, the site lying between two substantially built-up areas of mixed industrial and residential development. The local planning authority refused consent on the grounds (1) that the site was included in an industrial zone in a proposed planning scheme ; (2) that the frequent attendance of many thousands of people and the noise inseparable from a speedway track would adversely affect the character of the residential part of the district ; and (3) that the development would lead to serious congestion on the main road, access to the site being confined to this B road which had a carriage way of only twenty feet and a bottleneck caused by a level crossing 120 yards from the site. On appeal, the Minister agreed with all the authority's objections and dismissed the appeal.

Greyhound racing tracks are notorious for creating a great concourse of people, and a good deal of noise and general congestion. But their establishment may be permitted in proper cases. Thus, the appellants sought permission to establish a greyhound racing track on a ten acre site near the centre of a city. The site was bounded on one side by a road and on the other three sides by railways. Fronting the road at one end of the site, and separated from it by a railway embankment, were a few terrace houses. The local planning authority refused consent on the grounds that in the proposed planning scheme the land was zoned for industry and that the development would impair the residential amenities of the area and cause traffic congestion. On appeal, the Minister said that although the site had been available to industry for many years it had so far failed to attract industrialists, and was not an ideal location for industry. On the point of traffic congestion, it was the intention of the local authority to widen the road, and there was not likely to be any serious congestion. Finally, in view of the general character of the area there would not be any serious detriment to residential amenities. Accordingly the Minister allowed the appeal and permitted the establishment of the greyhound racing track. In another case, the application for a greyhound racing track might have been permitted had it not been for serious objections on traffic grounds. The appellant had the option to purchase eight acres of back land in an urban district and applied for permission to develop the land for the purposes of a greyhound-racing and sports stadium. The site was situated midway between two towns on the south side of a trunk road. The greater part of such development as existed was clustered round some crossroads immediately to the west of the site and along the line of the main road. The local planning authority refused consent for various reasons, but, on appeal, the Minister considered that the only serious objection to the proposed development related to the question of access and the danger of congestion on the trunk road. The only means of access to the site was a roadway which issued from the trunk road, which roadway was only twenty-six feet wide ; there was no footpath and visibility was severely limited. The Minister, after consultation with the Ministry of Transport, found that there was no possibility of overcoming this objection by an alternative system of entrances and exits and parking places, and that on these grounds the appeal must be dismissed.

It has been decided that the use, or additional use, of a greyhound stadium for motor-cycle speedway racing constitutes a " material change of use " of the land for which planning permission is required. As the Minister has pointed out, the noise which is inseparable from speedway racing and the disturbing effect which this may have on the amenities of the surrounding neighbourhood must be held to differentiate it from other forms of sport and place it in a class by itself. In addition, speedway racing may, and often does, involve special traffic considerations. But it is important to note that such a change of use, *i.e.*, from greyhound racing to motor-cycle speedway racing, *if* the period of use does not exceed twenty-eight days in all in any calendar year, is a " permitted use " and no application for permission is necessary in such a case, by virtue of r. 3 and class IV (2) of Part I of sch. 1 to the Town and Country Planning (General Development) Order, 1950 (S.I. 1950, no. 728). For a case where an application was made to add motor cycle speedway racing to the existing use of greyhound racing—this additional use being of a permanent and not merely an occasional nature—we may refer to the application made by

the proprietors of a greyhound racing stadium, which had been established for twenty years, to allow them to add motor-cycle speedway racing to the existing use. The site in question covered twenty acres of flat meadowland close to, and forming part of the floodland of, the River Thames. It was bounded on the west by a stream and on the north by an aqueduct, and at the north-east corner had a short frontage to a main road carrying heavy commercial and mineral traffic. The local planning authority refused consent for reasons of injury to amenity and traffic difficulties. On appeal, the Minister took the view that the amenities of the area, including those of the few houses near the site, would not be appreciably affected by the addition of a speedway track in the centre of this twenty acre site. There was ample parking space on the stadium and access to the road with full accommodation for two streams of vehicles over a length of half a mile in each direction. He allowed the appeal, subject to the conditions that motor-cycle race meetings should be confined to one day in each week and track practice to two days in each week, and that there should be no racing or practice on Sundays.

A change of use of land from one sport to another does not invariably involve a " material change of use " which requires planning permission. Thus, it was held in one case that the extension of a flat-racing track to include steeplechasing did not constitute a material change of use. The appellant company owned and managed a racecourse on which flat-racing took place on certain days of the year. The company proposed to construct steeplechasing and hurdle-racing tracks and to erect "jumps" on their course, and to fence off the tracks from the surrounding land. The Minister held that this did not constitute a material change of use, and hence permission was not required. Incidentally the Minister also held that the erection of the boundary fences and obstacles to be used in the course of steeplechasing or hurdle-racing were inherent in the use of the land for the purposes of a racecourse, and that they did not constitute " development " within the meaning of that term in the Town and Country Planning Act, 1947.

Some may be saddened to think that the new use of land as a golf course requires planning permission. But why not? For if ever there was a use of land which may interfere with the interests of agriculture, a golf course is such a use. This was well illustrated last year when the appellants, who were a well-known firm employing 12,000 people, wished to convert their land into a golf course. The appellants had bought the land in 1939 with the object of providing a golf course for their staff. The site in question consisted of four fields, totalling about 120 acres, which were on some high ground between two small towns in a loop of the River Thames not far from London. At the time of the application for planning permission three of the fields were under grass and the other under winter wheat. The appellants contended that agriculturally the land was in fact only fit for grazing and that, by combining golf with grazing, as they proposed to do, the best possible use would be made of it. The local planning authority having refused consent, the Minister, in dismissing the appeal, said that it was of great national importance that agricultural land should be used to the best advantage and he was satisfied that this land should not be used in a way which would limit its agricultural use to grazing.

Amusement arcades are not in the same category as outdoor sporting exercises and events, but they are sufficiently related to the latter to permit their being mentioned here. In one case, the appellant was the lessee of some vacant shop premises on the sea front of a coast resort, and sought permission to alter them for use as an amusement arcade. The local planning authority refused consent on the grounds that an amusement arcade would be detrimental to the amenities of the neighbourhood, and that the area in question was likely to be zoned either for mixed residential and shopping or for restricted business purposes. The authority had decided to confine this form of development, if it were allowed at all, to another area where there were already some amusement arcades. On appeal, the Minister said that amusement arcades constituted a special class of places of assembly in that they not infrequently caused congestion of the footpaths and roadway, and led to a deterioration of the neighbourhood. He considered that the policy of the authority in setting aside a special area for this type of development was reasonable, and he dismissed the appeal. In another case, the appellant, an amusement caterer, purchased three small single storey lock-up shops in the centre of a holiday resort. He opened two of the shops as an amusement arcade and was granted permission for this change of use for a limited period. He subsequently applied for this permission to be extended, and for permission to use the third shop for the same purpose. The local planning authority refused both applications on the grounds of injury to the amenities of the neighbourhood and of danger to the public from congestion at the corner of a main road, the site being at the intersection of two classified roads in the shopping centre of the town ; there was, in addition, a proposal for a road widening scheme at this point. On appeal, the Minister took the view that in this case there would be no serious injury to the amenities of the neighbourhood, and that the present flow of traffic was not sufficient to give rise to substantial objection on this ground. He decided to grant permission for all three shops to be used as an amusement arcade for a limited period of four years, and to that extent allowed the appeal.

In conclusion, let us try and summarize the results of our investigation into this subject. An exhaustive enumeration of the matters which must be taken into consideration in granting or refusing planning permission is not practicable, as each case is to be judged on its own merits and according to the particular circumstances. But the following are some of the important matters which generally arise for consideration :

(1) The loss of agricultural land if the proposed development is permitted ;

(2) The injury, if any, to the amenities of the neighbourhood. This is not an academic question, but must be related to the existing geographical situation and development in the neighbourhood, with particular reference to existing residential development. What residences are there in the neighbourhood and where are they situated? Are the residences of a substantial and permanent nature or are they of a temporary nature, only occupied at intervals?

(3) Traffic considerations—What roads are there leading to the site of the proposed development? Will those roads be strong and wide enough to carry the heavy and increased traffic which they will be required to carry without undue congestion and danger to normal traffic and other road users?

(4) What are the entrances to, and the exits from, the site of the proposed development? Will there be sufficient parking space for a large number of vehicles?

And last, but not least—(5) Have the local planning authority any other, and if so, what proposals for using the site of the proposed development, and when are such proposals likely to be carried into effect. For example, it may be that the planning authority wish to zone the site in question for residential or industrial development. Or, it may be that the ground of objection is that the proposed development will interfere with a road widening scheme. Such an objection is much more weighty if the road widening scheme is going to be put into operation within a measurable period of time than if it is merely in the nature of a tentative or general proposal which may not be carried into effect for some years, or perhaps not at all.

CASES ON CHIEF OFFICERS' SALARIES

[CONTRIBUTED]

The recent Award 2423 of the Industrial Court dealt with the salary of a town clerk, whose employing authority had not adopted the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks. The case came before the Industrial Court for settlement in accordance with the provisions of the Industrial Courts Act, 1919, and the agreed terms of reference were "to determine the increase of salary which shall be payable to the Town Clerk and the date of application of any increase which may be awarded, having regard to his existing terms and conditions of service and qualifications, and any other circumstances which the court may consider relevant." Both sides were represented by counsel at the hearing before the Industrial Court, and it is important to point out that at the hearing it was agreed by both parties that the claim should be dealt with solely on its merits and not upon the footing that implementation of the recommendations of the Joint Negotiating Committee were obligatory upon the borough council concerned.

BACKGROUND OF CASE

The award of the Industrial Court begins with a factual account of the background of the case. It appears that Mr. O. L. Roberts, the town clerk in this case, was appointed town clerk and solicitor to the Lambeth Borough Council on April 1, 1935, although at the time of the hearing he had been in the employ of that authority, in one capacity or another, for forty-six years. He had become entitled to retire on pension in December, 1949, when he had attained the age of sixty years. At that time, he had completed over forty-three years' service with that authority. His immediate predecessor in the office of town clerk was receiving at the time of his retirement a salary of £2,500 *per annum* and he was in addition permitted to retain certain emoluments, *viz.*, £100 *per annum* as clerk of the Lambeth Assessment Committee and an average of £230 annually in respect of his electoral duties as returning and registration officer. The salary at which Mr. Roberts was appointed on April 1, 1935, was £1,500 *per annum*, rising by five annual increments to £2,000. Since his appointment he had been granted one increase on his basic salary, namely £250 payable by two annual increments of £100 and one increment of £50 commencing on January 1, 1946. At the time of the hearing, his basic salary was £2,250 *per annum* in addition to which he was in receipt of a cost of living bonus amounting to £33 16*s.* 0*d. per annum*. Unlike that of his predecessor, Mr. Robert's salary was an inclusive one, and he was obliged to pay over to the council all fees received by him by virtue of his holding the office of town clerk, including the personal fees accruing from such of the duties of returning officer, acting returning officer, deputy returning officer, and registration officer as were performed by him. These fees in recent years amounted to an average of £600 *per annum*.

The memorandum of recommendations of the Joint Negotiating Committee was issued in September, 1949, and Mr. Roberts asked the Lambeth Borough Council to apply to him the recommended terms and conditions. This the borough council refused to do, claiming that acceptance by them of the terms and conditions recommended by the Joint Negotiating Committee was not obligatory. In the course of subsequent negotiations which took place between the establishment committee of the Lambeth Borough Council and the Society of Town Clerks acting on behalf of Mr. Roberts, the committee, while insisting that any salary payable to Mr. Roberts should continue to be inclusive of all fees, offered to recommend to the council that as from January 1, 1950, his salary should be £2,750 with two annual increments of £100 and one of £50 rising to £3,000 *per annum*. This offer was refused by Mr. Roberts on the ground that it was not in accordance with the recommendations of the Joint Negotiating Committee and Mr. Roberts caused a dispute to be referred to the National Arbitration Tribunal. The Conditions of Employment and National Arbitration Order, 1940, under which the Tribunal functioned, was revoked and in its place was substituted the Industrial Disputes Order, 1951. The Industrial Disputes Tribunal established under this order was held by the divisional court to be incompetent to deal with a claim such as that put forward by Mr. Roberts (*R.* v. *The National Arbitration Tribunal and Another, Ex parte South Shields Corporation* [1951] 2 All E.R. 828; 115 J.P. 594). As a consequence of this decision, Mr. Roberts discontinued his proceedings before the Industrial Disputes Tribunal. Subsequently, it was agreed between Mr. Roberts and the Lambeth Borough Council that his claim in the form stated above should be submitted to the Industrial Court.

CASE OF THE TOWN CLERK

It was submitted on behalf of Mr. Roberts that, although there was no essential difference in the nature of the duties performed by his predecessor and himself in the office of town clerk, his predecessor had at the date of his retirement been in receipt of a salary of £2,500, and had in addition been entitled to retain fees, while Mr. Roberts had been appointed at an inclusive salary of £1,500 *per annum* which had been increased only to £2,250 *per annum* in the course of fourteen years. It was contended that the inclusive salary of £2,750, rising to £3,000, which the council had offered as from January 1, 1950, was inadequate and unreasonable when regard was had to the fact that Mr. Roberts would be handing back to the council fees which accrued from his appointment as registration and returning officer and averaged £600 *per annum*. Moreover, it was claimed, even had Mr. Roberts been paid the salary previously paid to his predecessor and been allowed to retain the aforesaid fees of £600 *per annum*, his total remuneration would still have been inadequate having regard to the change in the general level of town clerks' remuneration since the date of his appointment. It was contended that the test of the reasonableness or otherwise of the council's offer might properly be measured by a comparison with the remuneration to which a town clerk within five years of pensionable age would be entitled if his employing authority were under obligation to remunerate him in accordance with the terms and conditions recommended by the Joint Negotiating Committee. The attention of the court was drawn to the memorandum of the Joint Negotiating Committee which recommends that for a local authority with a population of between 150,000 and 250,000 (Lambeth population is estimated at 230,000) the salary range of their clerk shall be at the minimum between £2,500 and £2,750 and at the maximum between £2,750 and £3,000 with two annual increments of £100 and one of £50; that in deciding the position of their clerk within the range the council should have regard to the factors mentioned in the preamble to the memorandum and to such other local factors, if any, as appear to them to be relevant; that upon the initial application of these terms the council shall have regard to the length of service of the clerk as clerk of the council when placing him in an appropriate place within the salaries scale selected; that a town clerk shall be entitled to receive and retain the personal fees accruing for such of the duties of returning officer

and registration officer as are performed by him, subject to the payment of superannuation contributions thereon where appropriate; that the minimum of any revised salary scale should apply from April 1, 1949, in the case of an officer who was within five years of his retiring age at the date of the memorandum in accordance with the advice contained in para. 1 (1) of sch. 3 to the memorandum. It was further stated that 89.2 *per cent.* of the 421 county and non-county boroughs in England and Wales, including the metropolitan boroughs, have implemented the recommendations of the Joint Negotiating Committee as regards salaries and 89.5 *per cent.* of them have implemented the recommended conditions of service. Of the twenty-eight metropolitan boroughs, it was stated that seventeen had adopted the Joint Negotiating Committee's recommendations or were paying salaries and observing conditions not less favourable. Under these recommendations a town clerk of a borough with the population of Lambeth who had been in the service of his authority for as long as Mr. Roberts would, it was claimed, not only be entitled to a salary of £2,750 *per annum* rising to £3,000 but that salary should be deemed to date from April 1, 1949, and in addition he would be entitled to retain all the emoluments accruing from his appointment as registration and returning officer. Mr. Roberts' inclusive salary, therefore, should be as from April 1, 1949, be £3,350 rising to £3,600 *per annum*.

CASE OF THE COUNCIL

On behalf of the borough council of Lambeth it was stated that some increase in the salary of Mr. Roberts was appropriate and in determining the amount of the increase it was submitted:

(*a*) That any increase should be related to the terms and conditions applicable to Mr. Roberts at the time of his appointment, and that, as the question of the retention or surrender of fees accruing to Mr. Roberts as registration or returning officer or otherwise was taken into consideration by the council in 1935 when it was agreed that he should be paid an inclusive salary, any revised salary should be inclusive and should provide for the continued surrender of fees;

(*b*) That to meet the recognized increases in the cost of living the revised inclusive salary should be subject to a sliding scale;

(*c*) That the range of duties of a town clerk in the case of a metropolitan borough is very much narrower than in the case of a county borough and the duties of a town clerk employed in each type respectively are not comparable. For example, among the functions exercised and the services administered by a county borough council are:

(i) Education, including the provision of primary, secondary and further education services,
(ii) The provision of housing accommodation,
(iii) Main drainage,
(iv) The functions of a planning authority under the Town and Country Planning Act, 1947, including the statutory duty of preparing a development plan for the area,
(v) As local health authority under the National Health Service Act, 1946, including the provision of maternity, midwifery and child welfare services, the ambulance service, the provision of health centres, health visiting, home nursing, vaccination, and immunization,
(vi) The repair of bridges,
(vii) Licensing authority for motor vehicles and drivers.

In addition to the above, the following functions are also commonly exercised by a county borough council.

(*a*) The maintenance of a police force,
(*b*) As fire authority for the protection of life and property from fire,
(*c*) The operation of a transport undertaking,
(*d*) The operation of a water undertaking.

In contrast, none of the functions set out above are exercised by a metropolitan borough with the exception of the provision of housing accommodation; in the case of housing the duties are shared between the metropolitan boroughs and the London County Council, the latter generally being responsible for the larger schemes. The London County Council had recently delegated to the metropolitan boroughs the control of advertisements.

(*e*) That the wider range of duties discharged by the council of a county borough results in a corresponding increase in the number of funds administered, in the staff employed and in the degree of administrative and financial responsibility borne as compared with a metropolitan borough council.

(*f*) That in considering the salary range for the town clerk regard should be had to the salary range of officers in the Civil Service carrying comparable responsibilities.

Having regard to the above, and other factors, it was submitted that the proper salary for the town clerk of Lambeth should be £2,750 rising by two annual increments of £100 each and by one increment of £50 to £3,000 *per annum*. This scale to be inclusive of fees. The borough council were of the opinion that in the case of Mr. Roberts this scale should operate from January 1, 1950.

AWARD OF THE COURT

The award stated that the court had given careful consideration to the evidence and submissions of the parties and that to accept the view put forward by the council would compel the assumption by the court that the original salary as fixed for Mr. Roberts in 1935 which for the same range of duties gave him £1,230 *per annum* less than the remuneration paid to his immediate predecessor was appropriate, that the increases granted upon it up to May, 1946, were necessarily adequate, and that no increase between May, 1946, and the present date should exceed in any event the sum of the order of £498, the average increase applying over the twenty-seven metropolitan boroughs. The court could not make any such assumption. Nor could the court accept the view that the mere fact that one borough is a county borough while another is a metropolitan borough is of itself sufficient to justify any substantial difference in the salary which the town clerk's post should attract, or that the measure of any increase given in the Civil Service upon salaries previously fixed collectively can afford any true and uniform guide to increases which should be given upon salaries which were fixed individually and without reference to any generally applicable scales. In arriving at the decision in this case the court had taken into account amongst other factors what, in the light of salaries for town clerks at present prevailing, an officer who has discharged satisfactorily the duties of town clerk and solicitor to a borough the size and character of Lambeth for seventeen years, and who was on September 8, 1949, within five years of pensionable age, might reasonably and properly expect to receive.

The court found and awarded that Mr. O. L. Roberts should be paid as from and including January 1, 1950, an inclusive salary of £3,250 rising by two annual increments of £100 and one increment of £50 to a maximum of £3,500 and should surrender to the Lambeth Borough Council all fees and emoluments other than any fee which may accrue to him in respect of an articled clerk taken with the assent of the council.

COMMENT

It will be noted that the award of the Industrial Court materially differs from the recommendations of the Joint Negotiating Committee. The maximum salary which could have been granted under the recommendations was £3,000 plus the emoluments averaging £600 a year which would make a total of £3,600 a year. The maximum salary of the award of the Court is £3,500. The officer must pay over his fees of £600 a year,

and his salary will, therefore, cost his authority £2,900 a year. This case, therefore, cannot be cited for or against the enforceability of the recommendations of the Joint Negotiating Committee for town clerks and district council clerks.

INDUSTRIAL DISPUTES TRIBUNAL

A recent case before the Industrial Disputes Tribunal has, however, made it now free from doubt that the recommendations of the Joint Negotiating Committee for Chief Officers of Local Authorities are " the recognized terms and conditions of employment " of treasurers, chief engineers, chief education officers, and chief architects in charge of separate departments. The Tribunal had previously found in favour of a number of officers whose trade union had appealed on their behalf (*see ante* at p. 520 for August 16, 1952), but all these cases had been reported to the Minister of Labour and National Service as " disputes " under art. 1 of the Industrial Disputes Order, 1951. In the commentary at 116 J.P.N., p. 520, it was suggested that the accumulated effect of all these decisions might well justify a case being reported as an " issue " under art. 2 of the Order, which relates to the enforcement of " recognized terms and conditions of employment." The National and Local Government Officers Association recently reported an issue to the Minister under art. 2 of the Order, the grounds of the difference being that the Ennerdale Urban District Council had refused to apply the recommendations of the Joint Negotiating Committee for Chief Officers of Local Authorities to the treasurer and the engineer of that council. The decision of the Tribunal has been given in I.D.T. Award 336. The Tribunal found " that the recognized terms and conditions of employment applicable to the case are the terms and conditions of employment settled by the Joint Negotiating Committee for Chief Officers of Local Authorities as set out in the Memorandum of Recommendations of the Joint Negotiating Committee dated September 12, 1950. They further find that the rural district council shall observe the aforesaid recognized terms and conditions of employment and award accordingly." H.K.

TAXATION IN BENIN

(From a local contributor)

Benin is one of the most ancient and noble Kingdoms of Nigeria and featured prominently in the history of early European colonization in West Africa. Although its administration is based on centuries of experience, the European system of levying rates and taxes was not introduced until the time of the first World War.

By 1915, it was found that the Native Authority was not reasonably in a position to pay the ruling chiefs and staffs their dues. Thus it was suggested by the knowledgeable Resident, Mr. James Watt, that taxation be introduced.

This idea was discussed by the Native Authority and accepted. First, a small annual levy of 2*s.* on every person, irrespective of sex, was introduced throughout Benin Division. Chiefs and staffs were employed to collect the tax. For administrative purposes, the whole Division was divided into several smaller sections, each placed under a Chief who was then known as a District Head.

In the beginning, these tax collecting staffs did not understand their full responsibilities as trustees of public money, in spite of the presence of British Administrative Officers, who were acting on advisory capacities. They were inexperienced. Almost at the same time, levies on vehicles were also introduced.

As time went on, the account of tax collected was muddled by improper keeping, resulting in termination of the staffs and the first batch of the chiefs. New hands replaced them.

It was later found necessary by the Native Authority to provide the public with social amenities as returns of taxes and rates collected. New roads and streets were constructed, the existing ones improved. Hospitals, schools, markets, waterworks and other public institutions were organized. Citizens were employed to run them and thereby earned their livings.

There are at least two systems of taxation. One is based on the net income, as in Europe, " Pay As You Earn," or " Taxation of Income at its Sources." The second system is known as taxation by flat rate which is a uniform rate throughout a Division and it affects, mostly, the peasants.

The procedure of levying and collecting these levies is very interesting. Vehicle owners buy a licence which entitles them to use the vehicles for a specific period. The rate varies from vehicle to vehicle. At the beginning of every financial year, usually in the month of April, an official income declaration form is circulated to each taxable person who fills it with all the required information relating to his total earnings during the year and all reasonable expenses incurred directly in earning the revenue. The form, duly filled and signed, is returned to the Tax Assessment Committee appointed among the Native Chiefs, whose duties are like the duties of the Income Tax Commissioners of the United Kingdom. In a few weeks, a demand note is received from the Tax Committee, calling for payment of a carefully worked out amount on the declared income. In many a time, complaints were often lodged and, to avoid incorrect assessment, appeals to court were always granted the taxpayer, but he could not appeal until he had paid the assessment, subject to refund of any determined excess. Of course, there was a case, when an appellant was determined to be " under-assessed," whereby he paid an extra.

The procedure relating to flat rate taxation is easier. Every adult, whose yearly income is below £20, falls under this class. During the tax collection period, he goes quietly to the Native Tax office, pays his due to the cashier and obtains an official receipt. However, in both systems of taxation defaulters are prosecuted and sentenced.

Thirty years ago, it was decided to exempt women from taxation, probably as a result of constant women's riots, relative to taxation. Thenceforward, flat rate tax per male adult was gradually raised to 10*s.*, perhaps to compensate for the gap previously filled by women.

In 1952, the flat rate tax was suddenly increased by fifty *per cent.* in one bound, due to the decision, at long last, to support education in the Division. This decision was taken at an emergency meeting of the Native Councillors, presided over by the Honourable Akenzua II, C.M.G., Oba of Benin, supported by the Senior Administrative Officer, Mr. J. G. McCall, who explained the procedure governing taxation in Nigeria. He also mentioned the necessity for the sudden increase. He also delivered a message from the Lieutenant-Governor, Western Provinces, who (he said) had imposed an increase of 5*s.* on the original rate of 10*s.*, plus a new education levy of 5*s.* payable annually by all taxable male persons.

This news, it appeared, shocked the sensibility of the councillors who looked at one another with disgusted eyes of " What shall we do, comrades " ? They bent their heads towards their knees, perhaps thinking of what might be the

sentiments of the electorates who were already resenting rumours of impending tax increase. Councillors rose alternately and spoke parliamentarily, although in their little ways, some of them resenting and others supporting the increase. There was a complete deadlock over the issue. At last, 17*s.* annual flat rate tax was adopted by a majority votes of 47 : 41, a truly democratic form of levying public rates and taxes.

Soon, there came a Bill introduced by the Western Local Government of Nigeria which Bill is here known as " Capitation Tax Bill." It seeks to increase the orginal capitation tax, an annual small rate collectable by the Central Treasury from sub-treasuries in the provinces. This rate is computed on the numerical strength of taxpayers. Originally, 6*d.* per tax collected was due from Benin Treasury, but the new Bill increases it to 10*s.* 6*d.*

Consequently, a resolution was taken by the councillors condemning and rejecting the new Bill. A motion was moved instructing their three elected members to stage a " walk-out " in protest, whenever the Capitation Tax Bill was introduced for discussion in the Central Legislature. The contention was that, if the Capitation Tax Bill was passed, many locally maintained public institutions would be closed down for want of funds.

The Government has since endeavoured to educate the mass in their civic duties as far as rates and taxes were concerned. Now, the whole matter is altogether a better understood subject in Benin than it has been in the past. It is no longer looked upon by the Authority as an easy way of getting money, nor by the public as a legitimate theft of hard-earned money by the Native Authority. It is now realized by all that rates and taxes, correctly and wisely assessed, have their place in a modern Social System.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 38.

AN OBSTINATE OLD MAN

A seventy-seven year old bee-keeper who sits as an independent member of an urban council in Sussex, appeared at Haywards Heath Magistrates' Court on April 20 last, charged, first, with having at a certain public meeting held at the Council Chamber used abusive behaviour whereby a breach of the peace was likely to be occasioned, contrary to s. 5 of the Public Order Act, 1936, and secondly, for having at the same place and at the same time, acted in a disorderly manner for the purpose of preventing the transaction of the business for which the said meeting was called together contrary to s. 1 of the Public Meeting Act, 1908.

Defendant, a former Arctic explorer and big game hunter, was not legally represented, and pleaded Guilty to both charges.

For the police, it was stated that at the ordinary monthly meeting of the council held earlier in the month, Item 2 was to receive the minutes of the previous monthly meeting. The resolution was put from the chair and seconded, but before it was put to the vote, defendant rose and requested that a certain item on those minutes should be read, as he wished to speak thereon. The Chairman ruled that the matter contained in the item in question was a purely private one and did not concern the Council at all, and he ruled defendant out of order and requested him to sit down. Defendant refused to sit down, and said : " I will stand up until I am heard and I will prevent anyone else speaking until I am heard."

Defendant continued to speak and was interrupted, and told the Chairman : " I am not taking orders from you ! What about this little thing ? " He produced a block of wood and said : " I will show you who is master here ! " He then proceeded to bang the block of wood on the table five or six times.

The other councillors present resolved to proceed to the next business, but defendant remained standing on his feet and proceeded to bang on the table with his piece of wood making such a noise that it became intolerable, and it became impossible to continue to carry on business. Defendant was informed by the Chairman that unless he desisted and withdrew, other steps would be taken. He again refused to sit down, and a police sergeant was summoned. The police sergeant went up to defendant, who said : " I respect the law but I don't respect that cad in the chair." He then left the Chamber with the police sergeant, saying to his colleagues as he left " Good-night, monkeys." He later told the police : " I have been waiting for this for two years now. They are going to have this every council meeting now."

Defendant, when speaking in mitigation, was stopped on more than one occasion by the Chairman when he tried to go into the history of his differences with the council, and he indicated that the subject matter of his dispute concerned housing.

Defendant, in the course of his address, told the court : " I have another scandal to expose next month, and I will hammer the table again if they won't hear me." Defendant added : " If you bind me over I will ignore it, and if you inflict a fine I will not pay it. . . . If I am sent to prison and the public know that I am in, then there will be such an explosion of rage over the country that the councillors will be ashamed to be seen in the streets."

The Chairman told defendant that he would be fined £1 on each charge and would have to pay £2 2*s.* 0*d.* costs. He would also have to enter into a recognizance during the next seven days to be of good behaviour and to keep the peace, in the sum of £50, for a period of one year. He would be allowed seven days in which to pay the fine.

Defendant said he refused to enter into any recognizance or to pay the fine. " Send me to Lewes." He added : " I will want a bigger block of wood next month."

Defendant appeared again before the Justices on April 27 last when Mr. A. H. Chandler, the clerk to the Justices, to whom the writer is greatly indebted for this report, informed the magistrates of a letter he had received from the defendant in which the latter stated : " I have no intention of being bound over or of paying the fine and costs."

Defendant, giving his reasons for not being bound over, said : " I think it is outrageous that I should be brought here for the simple matter of hammering the table with a block of wood to prevent a councillor speaking whilst I was on my feet. Dozens of times they have prevented me speaking when I had a scandal to expose." Defendant later added : " I pleaded guilty to holding up the meeting and I will do it again next month if I am there." The Chairman then sentenced defendant to two months' imprisonment for failing to enter into a recognizance, and seven days on each of the two cases of default in paying the fines. The sentences to be concurrent. The Chairman told the defendant that if at any time whilst he was in prison he decided to enter into a recognizance and pay the fine, he was at perfect liberty to do so, and could then be released immediately. Defendant replied : " I shall not do that if I am in for two years."

COMMENT

It is always saddening when a worthy but misguided person leaves a court with no option but to treat him with severity. It is obvious from the report set out above which, although full, represents but a small part of all that was said at the hearing, that the defendant genuinely believed that he was performing a service to the community by conducting himself at the council meeting in the manner stated but there can be no excuse whatever for the attitude he adopted to the Bench, and it is abundantly clear that the Bench had no alternative but to deal with the defendant in the manner reported.

It would seem to be open to doubt as to whether Parliament ever intended that s. 5 of the Public Order Act, 1936, should be invoked to deal with a recalcitrant councillor, but the wording of the section is so wide that it clearly covers an incident such as this. It will be remembered that it provides that " any person who . . . at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence," and s. 7 of the Act provides for a maximum penalty of three months' imprisonment and a fine of £50. Subsection 3 of s. 7 empowers a constable to arrest without warrant any person reasonably suspected by him to be committing an offence under s. 5.

Section 1 of the Act of 1908 provides that any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, shall be guilty of an offence and may be sentenced to one month's imprisonment or a fine of £5.

Section 91 of the Magistrates' Courts Act, 1952, which replaces s. 25 of the Summary Jurisdiction Act, 1879, enacts in subs. 3 that if any person ordered by a magistrates' court to enter into a recognizance to keep the peace and to be of good behaviour fails to comply with the order, he may be committed to custody for a period not exceeding six months or until he sooner complies with the order.

CORONATION HONOURS

PRIVY COUNCILLORS

Spens, Sir (William) Patrick, Chief Justice of India 1943-47.

KNIGHTS BACHELOR

Armitage, Stephen Cecil, alderman, Nottingham City Council.
Bateson, Dingwall Latham, president of the Law Society.
Ferguson, Major John Frederick, chief constable, Kent County Constabulary.
Fox, Lionel Wray, chairman of the Prison Commission for England and Wales.
Gluckstein, Colonel Louis Halle, Q.C.
Grimshaw, Alderman William Josiah.
Marshal, Alderman James.
Messer, Frederick, chairman, Central Health Services Council. Lately chairman North West Metropolitan Regional Hospital Board.
Muirhead, John Spencer, president of the Law Society of Scotland.
Norritt, James Henry, Lord Mayor of Belfast.
Pritchett, Alderman Theodore Beal.
Storrar, John, town clerk of Edinburgh.
Reed, The Hon. Geoffrey Sandford, Judge of the Supreme Court (Australia).
Jackson, Donald Edward, colonial legal service, Chief Justice, Windward and Leeward Islands.
Mathew, Charles, Q.C., colonial legal service, Chief Justice, Federation of Malaya.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Hirst, Frank Wyndham, Public Trustee.

C.B.E.

Bell, J., chief constable, Manchester City Police Force.
Bennett, W. J., chairman, Essex County Council.
Corscadden, R. A., chief Crown solicitor, N. Ireland.
Frost, E. G. C., alderman, Cambridgeshire County Council.
Fry, E. Maxwell, architect and town planner.
Gully, G. J., chairman, Kent River Board.
Gurrin, G. F., handwriting expert.
Heady, H., assistant secretary, Ministry of Housing.
Longhurst, M. L., assistant legal adviser, Ministry of Education.
Mitchison, G. R., Q.C.
Russell, E. C., chief education officer, Birmingham.
Scorrer, Miss A. M., chief inspector, Children's Dept., Home Office.
Shepherd, A. T., deputy receiver, Metropolitan Police.
Skyrme, W. T. C., secretary of Commissions of Peace, Lord Chancellor's Office.
Tumin, J., clerk of assize, Oxford Circuit, Supreme Court.
Turner, Lt.-Col. C. A. C., chief executive, Crawley New Town Development Corporation.
Milne-Watson, M., chairman, N. Thames Gas Board.
Webb, G. F., secretary, Royal Commission on Historic Monuments (England).
Willson, D. J., assistant solicitor, Board of Customs and Excise.
Gore, R. T., judge of the Supreme Court territory of Papua and New Guinea.

O.B.E.

Brown, A. W. H., deputy chief inspector (planning) Ministry of Housing and Local Government.
Congdon, G. F., town clerk, Harwich.
Doubleday, E. H., county planning officer, Hertfordshire County Council.
Farrow, D. G., chief education officer, Great Yarmouth.
Fowler, N. W. F., assistant chief constable, Kent County Constabulary.
French, R. H., assistant to the Master in Lunacy, Supreme Court.
Scott-Giles, C. W., secretary to the Institute of Municipal Engineering.
Grant, K. J., medical officer of health, Great Yarmouth.
Greenwood, Lt.-Col. R. B., assistant chief constable, Lincolnshire County Council.
Griffiths, Capt. H. P., assistant commissioner, City of London Police.
Harvey, R. W., clerk to the Felixstowe U.D.C.
Hatherill, G. H., deputy cdr., Metropolitan Police Force.
Hooper, E. R., assistant secretary, Metropolitan Police Office.
Kotch, H. J., county welfare officer, Warwickshire.
Lawrence, F. H., J.P., mayor of Chatham.
Lewis, R. V., clerk to Mablethorpe and Sutton U.D.C.
McPetrie, assistant legal adviser, Colonial Office.
Phillips, Major F. A., lately clerk to Rye Board of Conservators.
Richards, R. C. R., chief executive officer, Welsh Board of Health.
Tombs, A. E., alderman, borough of Abingdon, Berks.
Tomes, F. H., chief engineer, Lincolnshire River Board.
Watkinson, O. S., clerk to Hunstanton U.D.C.

M.B.E.

Barnes, S. G., superintendent, Lincolnshire County Constabulary.
Baum, L. G., superintendent and deputy chief constable, Cumberland and Westmorland Constabulary.
Brazier, C. A., higher and executive officer, Ministry of Housing and Local Government.
Carter, A. H., assistant chief constable, Gloucestershire Constabulary.
Colley, C. S., housing manager, Ruislip-Northwood U.D.C.
Cooke, J. H., chairman, Thornbury R.D.C., Glos.
Cox, A. W., principal assistant, Legal and Parliamentary Dept., L.C.C.
Cox, H. D., principal surveyor, Tithe Redemption Comm.
Cresswell, S., superintendent, Staffordshire Constabulary.
Davies, L., engineer and surveyor, Leatherhead U.D.C.
Garner, W., superintendent, Norfolk Constabulary.
Goulder, J. J. C., clerk of South Kesteven R.D.C.
Griffiths, Miss Joan, examiner of Acts, House of Lords.
Griffiths, J., clerk to Sheerness U.D.C.
Gwilliam, W. J., alderman, Pembroke Borough Council.
Hunnybun, Miss Noël, senior psychiatric social worker, child guidance department, Tavistock Clinic.
Jaynes, A. E., lately chief clerk, Gloucester District Probate Registry.
Jefford, F. R., chief sanitary inspector, Cheltenham.
King, F. W. E., vice-chairman, Amersham R.D.C.
Martin, F., deputy clerk of the Crown and Peace, Belfast and Co. Antrim.
Nichols, Miss W. C., senior executive officer, office of the Public Trustee.
Osborne, E. W. J., chief superintendent, Metropolitan Police Force.
Partridge, S. J., county welfare officer, E. Riding of Yorkshire.
Phillipo, G. E., clerk of the Lincolnshire River Board.
Phillips, M. G., superintendent, Bristol City Police Force.
Taylor, J. I., deputy chief engineer, Kent River Board.
Taylor, S. E., deputy principal officer, Ministry of Health and Local Government, N. Ireland.
Francis-Watkins, Miss D. M., higher executive officer, Office of H.M. Procurator-General and Treasury Solicitor.
Watson, J. S., chief sanitary inspector and housing officer, Border R.D.C.
Woolcott, F. C., senior executive officer, office of H.M. Procurator-General and Treasury Solicitor.

KING'S POLICE MEDAL

Lawrence, J., chief constable, Reading.
Watkins, C. H., chief constable, Glamorgan.
Hare, Major E., chief constable, Cornwall Constabulary.
Parfitt, G., chief constable, Barnsley.
Gill, R., assistant chief constable, Hampshire.
MacDonald, G. S., superintendent and deputy chief constable, Middlesbrough.
Griffiths, W., superintendent and deputy chief constable, Halifax.
Rawbone, F. J., superintendent, Birmingham City Police Force.
Elford, W., chief superintendent, West Riding.
Buckingham, R. G., superintendent and deputy chief constable, Oxfordshire.
Roberts, T. A., deputy superintendent, Surrey.
Bearne, L. H., superintendent, Metropolitan Police.
Wells, S. G., chief superintendent, Metropolitan Police.
Murray, J. A. Ross, chief constable, Motherwell and Wishaw.
Meikle, T., superintendent, Lothians and Peebles.

RETAINERS

Counsel and jockeys are not unalike
For with both its the winners that count,
And though much may be done by the riding
A great deal depends on the mount.

J.P.C.

REVIEWS

The Howard Journal, 1953. A Review of Modern Methods for The Prevention and Treatment of Crime and Juvenile Delinquency. *The Official Organ of the Howard League for Penal Reform* London: The Howard League for Penal Reform, Parliament Mansions, Abbey Orchard Street, S.W.1. Price 2s. 6d.

This issue is, as usual, full of useful and informative notes and articles, together with reviews of many books on criminology and kindred subjects.

The Howard League is against capital punishment and corporal punishment, but on both these controversial subjects it is fair, moderate in tone, and always at pains to ascertain facts, refusing to be swayed by prejudice or emotion.

Under the title "A Great Book" Miss Margery Fry contributes a full length article in the form of a tribute to Mr. L. W. Fox's book *The English Prison and Borstal Systems*. As Chairman of the Prison Commission, Mr. Fox has consistently devoted himself to progress and reform, and it is only the immense difficulty about staff and buildings that has stood in the way. Miss Fry writes with full knowledge of prisons and prison administration.

Another article which will prove of special interest to magistrates and probation officers, is contributed by Dr. W. Lindesay Neustatter, who is consultant Psychiatrist at the Northern Hospital, London, and at St. Ebba's Hospital, Epsom. His theme is "Problems of Probation with a Condition of Residence at a Mental Hospital." He considers that s. 4 of the Criminal Justice Act, 1948, is a valuable provision, but that its success must depend upon a judicious selection of cases, and his article will prove of practical help in making such a selection. As to psychoneurotics, these rarely need in-patient treatment, and now that there are more facilities for out-patient treatment this is generally preferable, with the added advantage of continuance at work. The difficult question of sexual perverts is carefully considered, and Dr. Neustatter recognizes that for some there is no cure, and the only course is to keep them out of harm's way, not as a punishment but as a measure of prevention. Probation, coupled with hospital treatment, may prove quite successful with some epileptics. There is an interesting discussion of depressed patients, some of whom appear in court on such charges as child murder, many on charges of attempted suicide. "Depressives respond well to treatment, and until they are better may need constant supervision to prevent a further suicidal attempt, hence they must be in hospital." On the general question of these s. 4 cases, Dr. Neustatter writes: "It should be stressed that though cases are referred by the courts, they must in all ways be treated exactly as other patients on the assumption that in sending them to Hospital the courts have regarded them as sick individuals and not as criminals. . . . Next a court order does not alter the voluntary status of patients; they are entitled to know they have the right to give seventy-two hours' notice of leaving, and in my view it is wrong to withhold this information on grounds of expediency though, of course, they will be told that if they intend to leave the matter will be reported to the probation officer."

House Purchase through Local Authorities. By A. Norman Schofield. London: Shaw & Sons, Ltd. 1953. Price 45s. net.

The learned author began this work with the intention of explaining the provisions of the Small Dwellings Acquisition Acts, and those related to this title in various Housing Acts. Publication was deferred to include the relevant provisions of the Housing Act, 1952, so that the work was quite up to date as at the time it appeared in February, 1953. The parts into which it is divided are primarily dictated by the differences between the different Acts. Thus Part I deals with the Small Dwellings Acquisition Acts, Part II with advances under the Housing Acts, and Part III with advances to housing associations. The remainder of the book is concerned with administrative machinery, apart from a short chapter on improvement grants. Much of the ground covered is familiar to the advisers of local authorities, but particular attention may be drawn to Part VII, which deals with the sale of council houses by local authorities, since here some new (political) conceptions have come into play.

The relevant sections of the Housing Acts as well as the Small Dwellings Acquisition Acts are duly set out, and the learned author also calls attention to some points of doubt which remain to be settled, particularly on the relation between the Housing Act, 1952, and the Rent Restrictions Acts. A large part of the book is occupied by forms for use in association with the matters dealt with in the text. These forms are copyright, and most of them obtainable from the publishers of the book—it will, however, be useful to have them here for reference.

The text is clearly set out and, so far as we have tested it, can be taken as quite reliable. The book as a whole will be a useful addition to the library of every local authority, and even more valuable, perhaps, to housing associations and the advisers of estate owners and building societies.

Conveyancing Costs. By J. L. R. Robinson. London: The Solicitors Law Stationery Society, Ltd. Price 7s. 6d. net.

This is a handbook produced in the series called "Oyez Practice Notes," which can be bound with similar booklets for office use, in a self binding case obtainable from the publishers. To say this about its form is to indicate, incidentally, its general scope. It is a book for quick reference in dealing with the preparation and examination of bills of costs: written by an author who is responsible for the "costs articles" in the *Solicitor's Journal*. The actual scales under the General Order of 1883 as amended up to 1953 are set out in an appendix, and another appendix gives precedents for bills of costs in conveyancing matters. The Orders themselves are printed, thus incidentally exposing the need for their being issued in consolidated form. The first half of the book comprises brief and informative notes on a number of matters relating to costs. We think the solicitor in private practice or the conveyancing staff in a local authority office would be well advised to provide themselves with this new edition.

"COUNCIL HOUSES" AND THE RENT RESTRICTIONS ACTS

By J. A. CÆSAR

II—THE EFFECT OF THE RESERVE AND AUXILIARY FORCES (PROTECTION OF CIVIL INTERESTS) ACT, 1951

The general position regarding the application of the Rent Restrictions Acts to "council" houses was dealt with in a previous article at 117 J.P.N. 90; it is now proposed to consider the extent to which that position is affected by the provisions of the Reserve & Auxiliary Forces (Protection of Civil Interests) Act, 1951, and, in this connexion, it should be borne in mind that this article, like the previous one, refers only to houses provided by a local authority under or for the purposes of Part V of the Housing Act, 1936, and not to houses provided by them as fire authority for members of their fire brigade or by a police authority for members of their police force (in which connexion it is interesting to reflect upon the different position in which firemen, as occupants of such houses, have been placed as a result of the consolidation of their pay and allowances, when compared with policemen whose pay and allowances have not been consolidated), or to houses provided by a local authority which are occupied on a "service-occupancy" basis or at a rent less than two-thirds of the rateable value or which are let furnished or partly furnished or which may consist partly of living accommodation and partly of accommodation used for the administrative or functional purposes of the local authority, or to houses provided (by building, acquisition or appropriation) by a local authority in a capacity other than as a "housing" authority.

Section 14 of the Reserve & Auxiliary Forces (Protection of Civil Interests) Act, 1951, provides that, with certain exceptions,

ss. 15, 16 and 17 of the Act " shall have effect . . . , in the case of a service man who performs a period of relevant service, other than a short period of training, . . . for giving, during that period of service . . . and four months from the date of the ending of it ([here]in . . . referred to . . . as his ' period of residence protection '), security of tenure of premises which at any time during the period of protection are a rented family residence of his."

" Rented family residence " is defined as meaning " premises in which (or in part of which) the service man was living immediately before the beginning of his period of service with a dependant or dependants of his in right of a tenancy at a rent of those premises being a tenancy vested in him or in that dependant or any of those dependants, and in which (or in part of which) at the time in question during the period of protection a dependant or dependants of his is or are living, whether with or without him, in right of such a tenancy . . . ."

The " protection of tenure " afforded by ss. 15 and 17 of the Act need not here concern us, but the provisions of s. 16 (which, like those of the two preceding sections, " shall not have effect if and so long as the rented family residence . . . is *bona fide* let at a rent which includes payments in respect of board ") are of interest to local authorities otherwise than merely from the point of view of the carrying out of their duties under the Rent Restrictions Acts.

Section 16 provides that " if at any time during a serviceman's period of residence protection . . . a tenancy qualifying for protection ends without being continued or renewed by agreement (whether on the same or on different terms and conditions), and . . . by reason only of such circumstances as are mentioned in the next succeeding subsection no statutory tenancy arises (apart from the provisions of this section) on the ending of the tenancy qualifying for protection, the Rent Restrictions Acts shall during the remainder of the period of protection apply in relation to the rented family residence as if those circumstances did not exist, and had not existed immediately before the ending of that tenancy, but shall so apply subject to the modifications provided for by this section as to standard rent."

" Tenancy qualifying for protection " is defined by s. 14 (1) (*b*) as meaning " the tenancy of a rented family residence of the service man in right of which a dependant or dependants of his is or are living therein or in part thereof at the time in question "; the " Rent Restrictions Acts." by virtue of s. 64 (1), " means the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925 " ; and the " circumstances mentioned in the next succeeding subsection " (*viz.*, s. 16 (2)) are, *inter alia*, " that the rateable value on the appropriate day (as defined for the purposes of the Rent Act of 1939) of the premises which are the rented family residence, or of a property of which at the ending of the tenancy qualifying for protection those premises form part, exceeded the relevant limit specified in subs. (1) of s. 3 of that Act," or " that those premises are such a dwelling-house as is mentioned in paragraph (*c*) of subs. (2) of the said s. 3," or " that immediately before the ending of the tenancy qualifying for protection the circumstances mentioned in subs. (7) of s. 12 of the Rent Act of 1920 (which relates to tenancies where the rent is less than two-thirds of the rateable value) applied as respects that tenancy or applied as respects a tenancy having effect subject to that tenancy."

From the foregoing it follows, *inter alia*, that where a " rented family residence " is a " council " house which is exempt from the provisions of the Rent Restrictions Acts by virtue of s. 3 (2) (*c*) of the Rent Restriction Act of 1939, it becomes subject to those Acts for the " period of residence protection " of the service man in question ; the " standard rent " of that " residence " then falls to be fixed either under subs. (4) or under subs. (5), (6) and (7) of s. 16 of the 1951 Act, depending on the circumstances, and that rent cannot, during the " period of residence protection," be increased by the local authority otherwise than in accordance with the provisions of the Rent Restrictions Acts ; as regards recovery of possession by the local authority the 1951 Act indicates that the Rent Restrictions Acts shall apply subject to the modifications contained in s. 19 of the 1951 Act, and the question then arises whether the position is affected by s. 156 of the Housing Act, 1936.

It seems to be clear that the provisions of s. 156 of the Housing Act can still be invoked during the " period of residence protection " since they are not, for that period, expressly or (it is submitted) impliedly repealed by the 1951 Act ; moreover, the 1951 Act, in so far as it deals with the application of the Rent Restrictions Acts, must surely, for the purposes of s. 156 of the Housing Act, be regarded as a " subsequent enactment " amending the Rent Restrictions Acts, 1920 to 1933, and not as a completely separate and unrelated piece of legislation.

If, therefore, the circumstances giving rise to an application for recovery of possession are such that any private landlord could recover possession without the necessity of providing the displaced tenant with alternative accommodation (*i.e.*, in any of the circumstances mentioned in sch. 1 to the Rent Restriction Act of 1933, as modified by s. 19 of the 1951 Act), the local authority would appear to be in no different position now from the position in which they were before the 1951 Act came into operation.

It might, however, be suggested that, if the reason for seeking repossession is the non-payment of rent by the tenant, the local authority, like a private landlord, would first have to obtain " leave of the appropriate court " under s. 2 (2) of the 1951 Act before instituting proceedings, and under s. 2 (3), *ibid*, before enforcing judgment ; this suggestion seems to be strengthened by the provisions of s. 25, *ibid*, dealing with " protection during a ' short period of training ', " which provisions, like those of s. 2, might very well be held to be provisions which do not specifically amend the Rent Restrictions Acts, in which case s. 156 of the Housing Act would, presumably, be subject thereto ; the suggestion, moreover, is probably perfectly correct in a case where it is one of the terms of the tenancy that the local authority, as landlords, shall have a right of re-entry in the event of a breach by the tenant of his obligation to pay his rent and the local authority seek to exercise that right, but if, as would normally be the case, the local authority, instead of exercising such a right, determined the tenancy by proper notice to quit, and then sought to recover possession if the tenant failed to comply with that notice, it is the writer's view that, in the light of the decision in *Butcher* v. *Poole Corporation* [1942] 2 All E.R. 572, subs. (2) and (3) of s. 2 of the 1951 Act will not apply.

Finally, if the circumstances giving rise to an application for recovery of possession are other than those specified in sch. 1 to the Rent Restriction Act of 1933 a doubt might then be expressed as to whether *Parry* v. *Harding* (1925) 88 J.P. 194 still applied or whether alternative accommodation would have to be provided and whether any of the other requirements of the Rent Restrictions Acts and of the Act of 1951 would have to be complied with ; the writer's view is that, if possession is required for any of the purposes referred to in s. 156 (1) of the Housing Act, the provisions of subs. (2) of that section and the decision in *Shelley* v. *London County Council* [1948] 2 All E.R. 898 ; 113 J.P. 1, seem to make it reasonably clear that the position of local authorities in this respect remain unaffected by the 1951 Act.

THE MEETING OF EXTREMES

The theory that all qualities are generated by their opposites is as old as Plato, and in the political world as elsewhere it is frequently to be observed that every idea contains within itself the seeds of its antithesis. History shows us a recurring cycle from absolute monarchy to oligarchy ; from oligarchy—the rule of the many by the few—to revolution and democracy ; from the rule of the people by the people to demagogy—the emergence of one man whose popularity eventually gives him dictatorial powers—and so back to tyranny again. Germany and Italy provided examples between the Wars ; Argentina has recently taken the same road. Our own history and that of the United States have included episodes of a similar kind. Fifty years ago the late Arthur Machen drew attention to this phenomenon in the Foreword to his work *The House of Souls* :

" We know how Hampden died that England might be free, first under the martial law of the Great Protector, and afterwards under the Whig Oligarchy. We have read how Cromwell secured Representative Institutions from the attack of Tyrants, first by " Pride's Purge," and then by the sterner, simpler method of abolishing the House of Commons. There must be few members of the Anglo-Saxon family who have not thrilled at the story of the *Mayflower* and its Pilgrims, of those brave men who left their homes in England and settled on the dreary, inhospitable shores of the Massachusetts, martyrs in the Cause of Humanity. We know how those foes of superstitition burned witches in Salem ; how those friends of religious freedom flogged and hanged the Quakers ; how the enemies of the cruel Star Chamber caused the Indians to disappear from the land."

And he might have added—" We remember, too, how those who framed the American Constitution, declaring all men to be born free and equal, preserved the institution of slavery, under that same Constitution, for almost a hundred years."

Much water has flowed under the bridges since that passage was written in 1906. We have read of isolated episodes like the dismissal, a few years back, of a schoolmaster in Tennessee for encouraging his pupils to read Darwin's *Origin of Species*—a dangerous work calculated to be subversive of orthodox belief. But Machen's words can now be more broadly applied, *mutatis mutandis*, to the present-day exploits of a small group in the United States Senate. The avowed foes of Communistic tyranny, for its suppression of freedom in thought and writing, its dreary uniformity, its deafness to the maxim of St. Augustine —*Audi alteram partem*—this group is emulating the excesses of its enemies in all but name. The recent tour of its emissaries in Europe, the purges of subversive literature, the persecution of progressive thought in the guise of an anti-Communist crusade, have in turn amused, antagonized and alarmed the most conservative and respectable organs of opinion in America and elsewhere in the civilized world.

Step by step with these extravagances go developments in Eastern Europe. In the Soviet Zone of Germany a new Marxist Edition of Grimm's *Fairy Tales* is being prepared. The *Tales* are to be freed of " romantic bourgeois tendencies " and reformed on a pattern of " Socialistic Realism." As a penalty for un-Marxist activities the Good Fairy is to be banished from the stories ; the deviationist tendencies of Cinderella are to be banned from youthful ears. Kings, queens and courtiers are to appear in a new light as " wicked despots, bureaucrats and decadent parasites." It can only be a matter of time before the same treatment is accorded to the *Arabian Nights ;* the story of *Ali Baba* contains capitalistic elements which must be sternly suppressed, and the reliance of Aladdin upon a Magic Lamp, to carry out tasks which every good worker should strive to achieve by increased productivity in the factories, is liable to make for discontent with the existing order. Scheherazade, however, may be left alone, since her inexhaustible talent for story-telling gives her an excellent claim to employment in any Ministry of Propaganda.

These extravagant attempts to confine thought, literature and art within the strait-jacket of contemporary political ideologies must, in the long run, inevitably cancel each other out. If that were the only result, they could be dismissed with a shrug of the shoulders as a symptom of the passing folly of this chaotic age. The tragedy is that, in the meantime, they can only strengthen the fortifications on either side of the boundary between east and west, and effectively prevent that interchange of ideas which is the only ultimate remedy for mutual suspicion, fear and mistrust.

Unfortunately the advocates of obscurantism have historical precedents to support their policy. A ruler who carried the doctrine to its logical conclusion was The Chinese Emperor Shih Huang Ti, who instituted the most reactionary social and political changes throughout the Empire. Eventually, observing that the innate conservatism of his people still clung tenaciously to the venerable customs of the past, he decided in 213 B.C. on the drastic step of destroying all available literature, except such works as dealt with agriculture, medicine and divination. The " Burning of the Books " was designed to counteract the Confucian doctrine of private education, where criticism and freedom of thought might flourish, and to put social life completely under state control. A strict censorship was at the same time established, and the Emperor boasted that his methods would secure the Dynasty " down to the ten-thousandth generation." In the event the Dynasty was overthrown and perished miserably with the second of its Emperors. This episode invites comparison with that of the Third Reich of Adolf Hitler, which was to last a thousand years, but perished in blood and fire after little more than a decade of life.

It is a strange reflection that both McCarthyism and Stalinism have ultimately emerged from a distortion of the ideas of eighteenth-century thinkers and scientists, whose writings gave birth, directly or indirectly, to the American, the French and, finally, the Russian Revolutions. What those thinkers left out of account was the profound truth expressed in the words of Lord Acton—" All power tends to corrupt ; absolute power corrupts absolutely." The statesman has not yet been born who can free himself entirely from the temptations that power provides ; only when Plato's prophecy comes true, when philosophers are kings and kings philosophers—will the problem come within sight of solution. When that occurs, and not before, it may be safe to put into practice that other Platonic ideal—the fusion of the aesthetic and the ethical in art. Until bitter experience has brought them to see the error of their ways powerful and unscrupulous men at both extremes will agree only in rendering lip-service to the idea that all forms of cultural activity should serve the " beneficent " ends of the prevailing ideology. And for both extremes " beneficent " will, of course, signify the putting and keeping in power of those who have the will and the means to carry out their ruthless aims. A.L.P.

THE PROMISE

To Love, Honour and Obey—
Until D.A.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Illegitimate child—Affiliation order not being enforced—Consent of putative father.*

Our client A obtained an affiliation order against B in respect of her illegitimate child C, ten years ago. After two years A, being in a position to maintain herself and the child and not wishing to have any contact at all with B, by letter voluntarily released him from payment of the order. She has not seen or heard from B since. So far as is known the order has never been formally revoked by the court and since A would be a necessary party to any such application the order apparently is still in force. A, who is unmarried, now proposes to adopt C, now aged ten years.

1. Is B's consent necessary?
2. If the order were revoked would it be necessary?
3. Are there any grounds on which the court could dispense with B's consent?
4. At the hearing is C obliged to be present? SALI.

Answer.

1. Yes, on the assumption that the order has not been revoked, as seems almost certain. *See* Adoption Act, 1950, s. 2 (4) (*a*). Consent can, however, be dispensed with on certain grounds. Notice should be served on B in accordance with r. 9 of the Adoption of Children (Summary Jurisdiction) Rules, 1949, as substituted by the Rules of 1952.

2. No, because B would not then be liable to contribute.

3. Yes, *see* s. 3 (1) of the Adoption Act, 1950. It can hardly be said that B has persistently neglected or refused to pay seeing that he has been told he need not do so, but his consent could be dispensed with if he cannot be found, or if his consent is unreasonably withheld. As apparently he has had no contact with A or C for some years he may consent, and if not the court may think his consent unreasonably withheld.

4. Yes, if he is a respondent, *see* r. 10 of the Rules of 1949, and *see* the Adoption of Children (Summary Jurisdiction) Rules, 1952, as to when an infant is to be made a respondent.

2.—Criminal Law—*Larceny—Whether conviction a bar to civil proceedings.*

Can a person who is convicted of larceny of cash and fined, resist a demand in the civil courts for the repayment of the cash? The only possible authority seems to be s. 109 of the Larceny Act, 1861, but this must, we think, refer to exemption from further criminal proceedings, although it is odd that it does not say so, and it is odd that any clause should be considered necessary to deal with so well established a maxim.

No order for restitution was made by the court.

Your advice would be appreciated. SANS.

Answer.

Section 109 of the Larceny Act, 1861, refers to "any offence punishable upon summary conviction by virtue of this Act." Stealing money is not such an offence, not being mentioned in that Act. Therefore there seems to be no reason why a civil action should not be maintained after the felony has been prosecuted.

3.—Housing Act, 1936—*Repair, demolition and closing of insanitary premises—Undertakings under s.* 11.

1. I refer to P.P. 4 at 117 J.P.N. 45, in which there appears to be a typographical error—should not the reference to "s. 10" be a reference to "s. 11." In this connexion there is a matter upon which I would appreciate your opinion.

2. It has been the practice of my council to accept undertakings under s. 11 (3) from owners that a house "... shall not *at any time after the vacation of the house by the present occupier of the house* be used for human habitation until the council, on being satisfied that it has been rendered fit for that purpose, shall cancel the undertaking ..."

It has been suggested that by virtue of the wording of subs. (3) an undertaking that a house shall not be used for human habitation can be accepted only where that house is vacant at the date of the undertaking but in *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165, Slesser, L.J., said "... I cannot see that there is any limitation as to what sort of an undertaking an individual may give ..."

I would appreciate your advice as to whether an undertaking on the terms before-mentioned may properly be accepted by a local authority. AHAR.

Answer.

1. Yes; we are obliged for the correction.

2. We think not. Subsection (3) admits either of two types of undertaking, to do works and to keep empty. It is upon the first type that *Johnson* v. *Leicester Corporation, supra,* is relevant. True, the house need not, as suggested in the third paragraph of the query, be vacated before an undertaking is given, but the plain scheme of the subsection is that an undertaking of the second type shall take immediate effect, upon pain of immediate demolition. We find no warrant for an undertaking in the terms italicized in the query.

4.—Licensing—*Off-licence for sale of "medicated wines"—Enlargement so as to authorize sale of "wines."*

A chemist is a holder of a wine licence. The licence authorizes him to sell "medicated wines" instead of being in the more usual unqualified term of wines accompanied by the deposit of an undertaking to restrict the sale to medicated wines. He now desires to have the qualification removed and be at liberty to sell all wines. What is the appropriate procedure? Must it be treated as though it were a perfectly new application or is it sufficient to apply to the licensing justices on notice to remove the qualification?

M. QUININE.

Answer.

The licensing justices may grant an off-licence for the sale of wine: any restriction on the varieties of wine to be sold under the authority of the licence is an obligation of the licence-holder to the licensing justices alone. The licensing justices should renew the licence as one for the sale of wine; if they require that it shall be restricted to sales of "medicated wine" the restriction should be in the form of a written undertaking by the licence-holder to sell no other.

5.—Licensing—*One of two joint licence holders ceased to be interested in the business of licensed premises—Whether transfer appropriate.*

We should be obliged to receive your opinion on the following:

A and B were the owners of a small grocery business to which a justices' off-licence had been granted in their joint names. A has ceased to be a member of the business and has gone abroad and B now wishes to apply to the justices for the renewal of the licence in his sole name. How can this be achieved? It would appear that it is not a transfer as defined by s. 23 (1) of the Licensing (Consolidation) Act, 1910, as no person is being substituted for A. NUL.

Answer.

In our opinion, a transfer of the licence from A and B jointly to B alone is appropriate. It is true that no person is being substituted for A; but two persons (A and B) have ceased to be interested in the business of the licensed premises and in substitution for them one person (B) has become the new tenant or occupier of the premises. In the light of the decision in *Linnett* v. *Metropolitan Police Commissioner* (1946) 110 J.P. 153, it is important that A's name shall be removed from the licence.

6.—Licensing—*Question of renewal where licensed business discontinued.*

On January 1 of this year I was informed by the chief education officer of the county council that a large fully licensed hotel had been purchased by the county council and coverted into a college for training teachers in domestic science.

I have now received confirmation from the clerk of the county council that the premises were purchased on May 3, 1951, and that the justices' licence should be regarded as having ceased. The fee for the renewal of the licence was paid in 1952 by the agents of the previous owner who inform me that it is intended to pay the fee again this year.

I shall be obliged if you will give me your opinion as to whether I should accept the renewal fee this year, or mark the entry in the register of licences "ceased to exist." NOI.

Answer.

The fee is properly chargeable only if the licence is renewed. It is difficult, on the situation outlined in the question, to see how the agents of the previous owner can advance themselves as applicants for renewal of the licence. But as there seems to be some claim to keep the licence in some kind of effect, we think that the proper course will be for the licensing justices to adjourn consideration of the renewal for objection to be considered under s. 16 (2) (3) (4) of the Licensing (Consolidation) Act, 1910. The objection would be on the grounds that the premises are not qualified to be licensed premises in that no rooms are provided for the accommodation of the public (as s. 37 (1) (*a*) of the Licensing (Consolidation) Act, 1910, requires) and that having regard to the nature of the business now carried on in the premises, the licence is unnecessary.

The whole situation seems to indicate a desire on the part of the agents for the previous owner to "borrow" from the Finance Acts, 1942 and 1946, the "licence in suspense" provisions: these provisions

are available *only* where licensed business is not carried on because of war circumstances or by reason of compulsory acquisition of the licensed premises. Neither of these grounds operates in this case.

7.—Magistrates—*Jurisdiction and powers—Mitigation of customs and excise penalties.*

With reference to your answer to P.P. 4 at p. 207, *ante*, may I draw your attention to the Customs and Excise Act, 1952.

Section 286 (2) of that Act provides as follows: "In any proceedings for an offence under the Customs or Excise Acts instituted in England, Wales or Northern Ireland, any court by whom the matter is considered may mitigate any pecuniary penalty as they see fit."

As you know, this Act came into force on January 1, 1953, and, since the Vehicles (Excise) Act is one of the "Customs or Excise Acts" within the meaning of s. 286 (2), the position is no longer as stated in your answer.

I would submit that the court now has an unfettered discretion in mitigation of penalties in cases under the Vehicles (Excise) Act, and that the question of whether or not a previous offence has been committed is quite irrelevant. JIB.

Answer.

We agree that the position since January 1, 1953, is as set out in the question.

The question published as P.P. 4 at p. 207, *ante*, was answered by us by post during the latter part of 1952, and the answer then given was correct. We regret that its publication was delayed until the coming into force of the Customs and Excise Act, 1952, made the answer no longer applicable.

8.—Road Traffic Acts—*Limited trade licence—Collection of new car from manufacturer—Carriage of relief driver on long journey.*

On January 14, 1953, a man was stopped in this city whilst driving a new car, just collected from a local works for delivery to his employers some 350 miles away. He had with him his wife and her name was endorsed on the docket which drivers have to carry when using limited trade plates. He said she was with him for company on the long journey he was making. Inquiries were made of his employers and they said that the woman was employed by them as a relief driver for this particular journey, that their drivers had instructions not to exceed twenty-five m.p.h. with the new vehicles, and that they had followed this practice for years without any police action. In their opinion the woman's presence on the vehicle was necessary for the purpose for which it was being used.

Does this constitute an offence under the above regulations?

Article B (2) (*a*) of No. 30 of these regulations says:

"Nothing in the preceding provisions of this article shall authorize the use . . . for any of the following purposes: To carry any person other than the driver . . . unless that person is either an employee of the holder of the licence whose presence is necessary for the purpose for which the vehicle is being used . . ."

You will notice that it is the purpose for which the vehicle is being used and can it be said that the delivery of a new car to a town 350 miles away is a use of that vehicle which warrants the carriage of a passenger in the person of a relief driver? Was that the "use" in the minds of the legislators when these regulations were framed or was it some use such as a vehicle being used to tow a broken down vehicle from the highway to a place of repair or some similar purpose, an attendant being needed from a safety point of view in such cases?

Your valued opinion would be appreciated. J.R.L.

Answer.

By para. 30, art. B, a vehicle may be used under a limited trade licence *for various purposes*, one of which is "for removing it from premises of a manufacturer . . . of . . . mechanically-propelled vehicles direct to his own premises."

If this vehicle is not to exceed twenty-five miles per hour on a 350 mile journey well over fourteen hours' driving is involved. If the court is satisfied by evidence that the wife is an employee of the licence holder and that, in the circumstances of this journey, a relief driver is necessary, we think it can be said that her presence is necessary for the purpose for which the vehicle is being used. It is a question of fact to be determined by the justices.

9.—Road Traffic Acts—*Speed limit—Goods vehicle over three tons unladen weight.*

The driver of a 3 tons 9 cwts., unladen weight, motor lorry, fitted with pneumatic tyres, not drawing a trailer, and bearing a C carrier's licence, has been reported for failing to exhibit a "20" disc in accordance with reg. 63 of the Motor Vehicles (Construction and Use) Regulations, 1951, and a controversy has arisen as to whether a vehicle of the above class is by virtue of the first schedule of the Road Traffic Act, 1934, restricted when not drawing a trailer, when unladen, to a speed limit of twenty miles per hour.

I am of the opinion that the above schedule clearly indicates that a vehicle over three tons unladen weight of the above class is limited to twenty miles per hour whether or not it is laden or operating under a carrier's licence, except when adapted for conveyance of horses or, when not exceeding five tons, is not fitted with a body, and that it is only those vehicles which are defined as "motor cars" that are subject to a speed limit by virtue of the carrier's licence.

It is, however, contended that, although the vehicle in *Blenkin* v. *Bell* happened to be a pneumatic tyred vehicle weighing less than three tons the words of the Lord Chief Justice, "If a vehicle can be used for carrying either passengers or goods, and it is being used for carrying goods, as distinct from passengers' luggage, it requires a licence and certain restrictions are placed upon its use on the road. If it were not used as a goods vehicle, it would not require a licence, and the speed limit is only applicable when it is carrying goods," and the finding in *Woolley* v. *Moore* that, "the decision in *Blenkin* v. *Bell*, *supra*, in no way turned on the fact that the vehicle with which the case was concerned was a shooting brake, but turned on the fact that the vehicle, constructed as a goods vehicle and also capable of carrying passengers, and bearing a carrier's C licence, was at the material time not being used for the carriage of goods, and that, therefore, the conditions of the C licence did not apply," indicates that any vehicle "capable of carrying passengers" is exempt from a speed limit when not being used for the carriage of goods.

I should be grateful for your advice as to whether:

1. The vehicle described was subject to a speed limit of twenty miles per hour when not carrying goods, and,
2. If it is not subject to a speed limit, whether a "20" plate is required to be carried when the vehicle is not carrying goods. JAR.

Answer.

The cases referred to had to interpret para. 2 (1) (*a*) of the first schedule, Road Traffic Act, 1930, as amended, and they must be read as relating only to vehicles to which that paragraph relates.

The vehicle in question comes not within that paragraph but within para. 2 (1) (*d*). The answers to the questions are, therefore:

1. Yes.
2. Does not arise.

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THE Standing Joint Committee for the East Riding of Yorkshire invite applications for the position of Chief Constable of the County Police Force.

Applicants must be under forty years of age, unless they have had previous service in a police force, or are otherwise entitled to reckon previous service as approved service for purposes of pension, or there are other special circumstances approved by the Secretary of State. They must have had previous police experience or possess some exceptional qualification or experience specially fitting them for the post.

The salary will be £1,500 per annum, rising by annual increments of £50 to a maximum of £1,650, and is subject to rateable deductions under the Police Pensions Act.

Forms of application and conditions of appointment can be obtained from the undersigned, by whom applications, accompanied by copies of not more than three testimonials, must be received not later than June 30, 1953.

Canvassing, directly or indirectly, will be deemed a disqualification.

THOMAS STEPHENSON,
Clerk to the Standing Joint Committee.

County Hall,
Beverley.
June 1, 1953.

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Applications, giving full details of experience and the names of two referees, should be forwarded to me not later than June 15, 1953.

G. E. CLARK,
Clerk to the Justices.

11a Queen Street,
Oldham.

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